

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT (PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7219/WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/06022	International filing date (day/month/year) 10.06.2003	Priority date (day/month/year) 21.06.2002
International Patent Classification (IPC) or both national classification and IPC A23G1/10		
Applicant NESTEC S.A. et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.



2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 28.11.2003	Date of completion of this report 18.10.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Boddaert, P Telephone No. +31 70 340-3471 

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/EP 03/06022

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-14 as originally filed

Claims, Numbers

1-16 as originally filed

Drawings, Sheets

1/2, 2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/EP 03/06022**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-15
	No: Claims	16
Inventive step (IS)	Yes: Claims	1-15
	No: Claims	16
Industrial applicability (IA)	Yes: Claims	1-16
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP 03/06022

Re Item V

Reference is made to the following documents :

D1: US-A-4191786
D2: DE-A-19907782
D3: US-A-4679498
D4: EP-A-0775446
D5: US-A-4861615
D6: EP-A-0603467

1. The present application does not meet the requirements of Article 33(2) PCT because the subject-matter of claim 16 is not new.

Some of the features in the apparatus claim 16 relate to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features. The intended limitations are therefore not clear from this claim, contrary to the requirements of Article 6 PCT.

Claim 16 is interpreted as an apparatus , with the same technical features , suitable to carry out the process.

a. The document D1 discloses (col.3 l.51-68 ; claim 1) mixing chocolate liquor and then continuously forcing (by a pump or extruder) through a die with multiple orifices.

The subject-matter of claim 16 is therefore not new

b. The document D2 discloses (claims, figures) the fluidification/plastification (lowering the viscosity) of chocolate mass by pressing with a pump system through a die assembly with multiple holes.

The subject-matter of claim 16 is therefore not new

c. The document D3 discloses (col.4-col.8; fig) the grinding of chocolate ingredients , fluidification in a compression double extruder system , adding cocoa butter and mixing

The subject-matter of claim 16 is therefore not new

d. It appears documents D4 (claims; fig. 1,2) , D5 (col.1-col.3) and D6 (p.2 l.52-p.3) also

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP 03/06022

deprive claim 16 of novelty.

2. The technical features of claims 1-15 do not appear to be disclosed or suggested in any of the cited documents.

3. Remark : The terms 'essentially', 'plurality' used in claims 1,2,3,4,12,16 do not appear to have a precise meaning and claim 1 appears to define the subject-matter in terms of the result to be achieved , contrary to Article 6 PCT.